



Paper No. 40

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Richard Mettke
7921 Panary Court
Reynoldsburg, OH 43068

In re Application of
Richard Mettke
Application No. 09/134,831
Filed: August 17, 1998
Attorney Docket No: 6388.005

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 5, 2003, to revive the above-identified application.

This petition is hereby **Dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This above-identified application became abandoned for failure to timely file a proper reply to a final Office Action pursuant to 37 CFR §1.113. The final Office Action was mailed on March 12, 2002 and set a three (3) month shortened statutory period for reply. An amendment was submitted on April 24, 2002. In response to the amendment an Advisory Action was mailed on May 15, 2002 indicating the amendment submitted on April 24, 2002 did not place the application in condition for allowance. A second advisory action mailed June 25, 2002 informed petitioner the amendment of May 29, 2002 did not place the application in condition for allowance. A third advisory action was mailed on October 11, 2002 in response to the amendment submitted on September 16, 2002 informing petitioner the amendment did not place the application in condition for allowance.¹ A petition under 37 CFR 1.181 was dismissed on June 5, 2003. Accordingly, this application became abandoned on June 13, 2002. A Notice of Abandonment was mailed on June 9, 2003. A petition under 37 CFR 1.137(a) was dismissed on September 30, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal

¹It is noted the amendment submitted on September 16, 2002 was untimely. Although petitioner submitted a 4 month request for extension of time along with the amendment, the maximum extendable period for reply expired on September 13, 2002.

disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was intentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks item (1) the required reply. The proposed reply required for consideration of a petition to revive after a final Office Action must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that prima facie places the application in condition for allowance, the filing of a continuing application or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114.

Further Correspondence with respect to this matter should be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 308-6916 (until November 29, 2003) (703) 872-9306
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-0251.



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